

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MT. HAWLEY INSURANCE COMPANY,

Plaintiff,

Civ. Action No.: _____

v.

PINK DONUTS, LLC d/b/a PINK LOVE DONUTS
AND MORE,

Defendant.

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COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Mt. Hawley Insurance Company (“Mt. Hawley”), by its attorneys, Delahunt Law PLLC, for its complaint for declaratory judgment alleges upon information and belief:

JURISDICTION, PARTIES, AND VENUE

1. This is an action for declaratory judgment pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. section 2201. Mt. Hawley seeks judgment declaring it has no duty to defend or indemnify defendant Pink Donuts, LLC d/b/a Pink Love Donuts and More (“Pink Donuts”) in connection with a March 12, 2022 incident and the related subsequent action captioned Michael Mazur, Individually, and Dylann Stahl, Individually, and Both as Parents and Natural Guardians of N.M., a Minor vs. Nishiki Market, LLC, d/b/a Smorgasburg Miami, and Pink Donuts, LLC, d/b/a Pink Love Donuts and More, Florida Circuit Court, 11th Judicial Circuit, Case No. 2022-010055-CA-01 (“the Mazur Action”).

2. At all relevant times, Mt. Hawley was an Illinois corporation with its principal place of business in Illinois.

3. At all relevant times, Mt. Hawley was engaged in certain insurance business in New York State on an excess and surplus lines basis.

4. At all relevant times, Pink Donuts was a limited liability company domiciled in Florida with its principal place of business in Florida.

5. Upon information and belief, Diego Macedo is the sole member of Pink Donuts, and is a citizen of Florida.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. section 1332(a)(1) based upon complete diversity of citizenship of the parties and an amount in controversy that exceeds \$75,000.

7. Pink Donuts is subject to personal jurisdiction pursuant to New York General Obligations Law sections 5-1401 and 5-1402.

8. Venue is proper in this Court pursuant to 28 U.S.C. section 1391(b)(3).

FACTS

9. At all relevant times, Pink Donuts operated two restaurants located at 825 and 827 East Oakland Park Boulevard, Oakland Park, Florida and 222 67th Street, Miami Beach, Florida.

10. Mt. Hawley issued Pink Donuts a policy including commercial general liability coverage (No. GPK0019346) for the period June 4, 2021 to June 4, 2022 (the “Mt. Hawley Policy”). A certified copy of the Mt. Hawley Policy is attached hereto as **Exhibit 1**.

11. The Mt. Hawley Policy is subject to the Service of Suit and Conditions Endorsement, which states, in part:

SERVICE OF SUIT AND CONDITIONS ENDORSEMENT

Conditions

1. This Policy is amended to add the following Conditions:

AA. Jurisdiction and Venue. It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the “Insured” shall submit to the jurisdiction of a court of competent jurisdiction in the State of New York, and shall comply with all the requirements necessary to give such court jurisdiction. Any litigation commenced by any “Insured” against the Company shall be initiated in New York. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company’s right to remove an action to a United States District Court.

BB. Choice of Law. All matters arising hereunder including questions related to the validity, interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York (notwithstanding New York’s conflicts of law rules).

12. The Mt. Hawley Policy is subject to the Classification Limitation Endorsement, which states:

CLASSIFICATION LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance applies only to locations and operations that are described on forms RGBG 670 Location Supplementary Schedule and RGBG 0010 Commercial General Liability Coverage Part Classification Descriptions attached to this policy.

If any operation(s) and/or location(s) are not so described, they are not covered hereunder.

13. The Mt. Hawley Policy’s Location Supplementary Schedule, as amended, lists 825 and 827 East Oakland Park Boulevard, Oakland Park, Florida 33334 and 222 67th Street, Miami Beach, Florida 33141 as the only Covered Locations.

14. On dates including March 12, 2022, Pink Donuts operated a food service concession at “Smorgasburg Miami” at 2600 NW 2nd Avenue, Miami, Florida.

15. Mt. Hawley was placed on notice of a March 12, 2022 incident in which Smorgasburg Miami patrons Michael Mazur, Dylann Stahl (“Stahl”), and their infant child were allegedly injured as a result of Pink Donuts’ tent striking Stahl to the ground, causing the infant to fall out of her arms.

16. On or about June 1, 2022, the Mazur Action was commenced. A copy of the complaint in the Mazur Action is attached hereto as **Exhibit 2**.

17. The complaint in the Mazur Action alleges:

13. The Family was walking in the common areas of the SMORGASBURG event near Defendant, PINK DONUTS, LLC, D/B/A PINK LOVE DONUTS AND MORE’s booth, when a gust of wind blew over PINK DONUTS LOVE AND MORE’S unsecured tent, struck or made contact with each member of The Family. The tent knocked DYLANN STAHL to the ground and caused N.M. to fall out of her arms, resulting in N.M. suffering a cranial fracture.
14. Upon information and belief, wind advisories had been issued for Miami-Dade and Broward Counties warning citizens of wind gusts between 35-40 miles per hour.
15. While many of the vendors at the SMORGASBURG event secured or otherwise tied down their tents, PINK LOVE DONUTS AND MORE, failed to secure their tent with any weighted objects that would have prevented this incident.

18. The complaint in the Mazur Action asserts causes of action against Pink Donuts for negligent infliction of emotional distress, premises liability, and negligence under the non-delegable duty doctrine.

19. Pursuant to the Mt. Hawley Policy’s Classification Limitation endorsement, the Mt. Hawley Policy applies only to the locations described in the Mt. Hawley policy’s Location Supplementary Schedule.

20. The Mt. Hawley policy's Location Supplementary Schedule, as amended, lists 827 East Oakland Park Boulevard, Oakland Park, Florida 33334 and 222 67th Street, Miami Beach, Florida 33141 as the only Covered Locations.

21. The Smorgasburg Miami location at 2600 NW 2nd Avenue, Miami, Florida where the March 12, 2022 incident alleged in the Mazur Action complaint took place is not listed in the Location Supplementary Schedule as a Covered Location under the Mt. Hawley policy.

22. Mt. Hawley has no duty to defend or indemnify Pink Donuts in the Mazur Action or in connection with the March 12, 2022 incident alleged therein as the incident and any claims and suits arising from the incident are outside the scope of the Mt. Hawley policy pursuant to the Classification Limitation endorsement.

23. Pursuant to the Mt. Hawley policy's Service of Suit and Conditions Endorsement, Mt. Hawley has filed this action in this Court in order to obtain a judgment declaring that, under New York law, Mt. Hawley has no duty to defend or indemnify Pink Donuts in connection with the March 12, 2022 incident and the Mazur Action.

24. Mt. Hawley has offered to defend Pink Donuts in the Mazur Action on a gratuitous basis pending the Court's disposition of this action.

FIRST CAUSE OF ACTION

25. Mt. Hawley re-alleges paragraphs 1 through 24 as if fully set forth herein.

26. Mt. Hawley has no duty to defend or indemnify Pink Donuts in the Mazur Action or in connection with the March 12, 2022 incident alleged therein as the incident and any claims and suits arising from the incident are outside the scope of the Mt. Hawley Policy pursuant to the Classification Limitation endorsement.

27. Mt. Hawley is entitled to judgment declaring that it has no obligation to defend or indemnify Pink Donuts in connection with the March 12, 2022 incident and the Mazur Action.

WHEREFORE, Mt. Hawley respectfully requests judgment: (1) declaring that it has no obligation to defend or indemnify Pink Donuts in connection with the March 12, 2022 incident and the Mazur Action; and (2) granting such other and further relief in Mt. Hawley's favor as the Court finds just and appropriate.

Dated: January 27, 2023

Respectfully submitted,

DELAHUNT LAW PLLC

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